TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~371.~~ 141

HAMILTON SLAWSON, JR., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED NOVEMBER 30, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 371.

HAMILTON SLAWSON, JR., APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.—Filed M'ch* 20, 1868.

U. S. Court of Claims. December term, 1867.

HAMILTON SLAWSON, JR., }
vs. } 3120.
THE UNITED STATES. }

To the Honorable Court of Claims:

The petition of Hamilton Slawson, jr., a citizen of the United States, resident of the city of Charleston, State of South Carolina, showeth:

That, in the month of February, A. D. 1865, your petitioner was the owner, and in full possession of the steamboat De Kalb, then lying in the harbor of Charleston aforesaid, of the value of thirty thousand dollars; that, on or about the 19th day of February, A. D. 1865 aforesaid, and after the surrender of the city of Charleston aforesaid, your petitioner met G. B. A. Towers, an engineer-in-chief in the United States Navy, who had been assigned to duty in the Quartermaster's Department in said city, to keep transports in running order, and who, your petitioner was informed, was authorized to hire and charter vessels and steamboats for the use of the military authorities in and about said city; and your petitioner then and there hired and chartered the said steamboat "De Kalb" to the said Towers for military purposes; and in pursuance of said contract, your petitioner delivered said steamboat to Lt. Henry Hagens, quartermaster of the United States Army, then acting in Charleston aforesaid.

Your petitioner further shows that, afterwards, to wit, in the month of March, A. D. 1866, the Quartermaster's Department of the United States Army, then having possession of said steamboat, under the contract above stated, refused to return the said steamboat to your petitioner, and, without notice to your petitioner, and against his will,

2 turned the said steamboat over to the agent of the Treasury Department of the United States, as captured under the act of Congress for such purposes made and provided, approved March 12, 1863. The said agent of the Treasury Department, T. C. Callicot, esq., to whom said steamboat had been turned over, sold said steamboat, and the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said steamboat was sold, or the expenses attending said sale; but he states, on information and belief, that the said steamboat was much damaged and worn by the Government of the United States by the constant use aforesaid, and when said steamboat was sold, she brought only five thousand three hundred and forty-five dollars, ($5,345 00,) which was the sum for which she was sold, by the agent aforesaid, and the expenses of said sale one thousand three hundred and eighty-one dollars and sixty-two cents, ($1,381 62,) and the net proceeds thereof which have been paid into the Treasury of the United States amount to three thousand nine hundred and sixty-three dollars and thirty-eight cents, ($3,963 38.)

Your petitioner further shows that his said steamboat was never abandoned or forfeited; that no proceedings for the purpose of condemning said steamboat have ever been instituted in any court or before any tribunal; that she was not appropriated to public use on due appraisement and certificate thereof, but was held as captured property,

and as such was turned over to the agent of the Treasury Department aforesaid.

Your petitioner further shows that if there had been a valid capture of said steamboat, which, he understands, is asserted by the United States, he is nevertheless entitled to receive the net proceeds of it, amounting to the sum of three thousand nine hundred and sixty-three dollars and thirty-eight cents, ($3,963 38,) under the provisions of the third section of the act of Congress, approved March 12, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government.

Your petitioner further shows that he made an application to
3 the honorable the Secretary of the Treasury for the return of said steamboat, and that said Secretary replied, among other things, that, "in view of the facts disclosed by the evidence offered by the petitioner, if the property had been seized by a Treasury agent, or had not come into the possession of this Department by transfer from the military authorities as captured, it might be within the scope of the authority of the Secretary of the Treasury to decide that the United States has no legal or rightful claim to the steamboat, and to restore her to the petitioner. But by the act of transfer to the Treasury Department, the military power has adjudged and determined the fact, that the boat was the lawful capture or prize of the Army, and it is not within my power to revise that decision." "It follows that the steamboat must be disposed of in the manner provided by law, leaving the petitioner to his right to reclaim the proceeds of its sale by application to the Court of Claims."

HAMILTON SLAWSON, JR.,
By GEO. TAYLOR, *Att'y-in-fact.*

CITY OF WASHINGTON,
District of Columbia, ss:

George Taylor, being duly sworn, deposeth and saith that he is the attorney-in-fact of the claimant named in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that the said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets; and that he believes the facts as stated in said petition are true.

GEORGE TAYLOR.

Sworn to before me this 16th day of March, A. D. 1868.

JOHN RANDOLPH,
Ass't Clerk and Comm'r Court of Claims.

Residence of the claimant,
Charleston, South Carolina.

Address and residence of claimant's solicitor,

GEO. TAYLOR,
348 *Franklin Row, Washington City.*

4 In the United States Court of Claims. December term, A. D. 1867.

HAMILTON SLAWSON, J'R,
vs.
THE UNITED STATES. } No. 3120. Filed May 12, 1868.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein, and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of three thousand nine hundred and sixty-three dollars and thirty-eight cents, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for the U. S.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States.

JOHN J. WEED,
Assistant Solicitor for the U. S.

5 In the Court of Claims.

HAMILTON SLAWSON, J'R,
vs.
THE UNITED STATES. } 3120.

At a Court of Claims held at the Capitol in the city of Washington, eighth of May, A. D. 1871, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant take nothing by his petition, and that the same be dismissed.

By the court.
A true copy of record.

6 In the Court of Claims.

HAMILTON SLAWSON, J'R,
vs.
THE UNITED STATES, } 3120.

Now comes into open court Geo. Taylor, attorney for claimant, and moves for leave to appeal from the decision of this honorable court in the above-entitled cause to the Supreme Court of the United States.
May 18, 1871.
Filed in clerk's office.

HAMILTON SLAWSON, J'R,
vs.
THE UNITED STATES. } 3120.

Ordered that the appeal be allowed as prayed for.
By the court.
MAY 18, 1871.

7 Court of Claims.

HAMILTON SLAWSON, J'R,
vs.
THE UNITED STATES. } No. 3120.

After examination and consideration of the evidence in this case, the court finds the facts therein to be as follows:

I. The claimant was, prior to, during, and after the war of the rebellion, a citizen of the United States, resident in Charleston, South Carolina.

II. In April, 1861, before the bombardment of Fort Sumter, the armed rebels at Charleston took forcible possession of the steamer De Kalb, for the proceeds of the sale of which this suit is brought, and the rebel authorities kept her in their service under a charter, and generally with a guard of a sergeant and three to six men on her, until the day of the evacuation of Charleston by the rebels in February, 1865. She was used by those authorities to transport men and quartermaster's and commissary stores between Charleston, and the rebel batteries around Charleston Bay.

8 III. When the said boat was so taken possession of the claimant was the agent of her then owner in reference to her, and as such agent he objected to her being taken into the service of the rebels.

IV. In April, 1863, while still in the use of the rebel authorities for the purpose aforesaid, the said steamboat was sold at Charleston by the administrator of J. Harvey Dingle, her owner, at which sale the claimant became the purchaser of her. He tried very often to get her back from the rebel government, but could not do it; but whether he so tried before or after his purchase of her does not appear.

V. During the whole period of the rebellion up to the day of the evacuation of Charleston, the claimant, first as agent of said Dingle, and afterwards as owner of said boat, was engaged in her management.

VI. On the morning of the evacuation of Charleston by the rebels,

the said boat, then lying at the wharf in Charleston, was set on fire by rebel soldiers and turned adrift in the harbor there, when the claimant and others went to her in a small boat, put out the fire, and stayed on board of her until she drifted ashore on James Island, opposite
9 Charleston, where she was when the United States forces took possession of Charleston.

VII. Upon the occupation of that place by those forces, G. B. N. Tower, an engineer in the U. S. Navy, was placed in charge of captured vessels and transport service, and in a conversation between him and the claimant, mention was made of the said boat, and after making inquiries as to her condition, the said Tower directed the clainant to have her brought to the city of Charleston from James Island shore, and he agreed to place her in the service of the United States Government. The said Tower afterwards ordered one Duncan, a blacksmith and boiler-maker, (who was introduced to him by the claimant,) to get said boat in order, which he did, and the day she came to the wharf at Charleston, repaired, she was put in the United States service, with the consent of Capain Moore of the Quartermaster's Department of the U. S. Army, the said Tower agreeing that $150 per day should be paid for her use, and the said Moore consenting thereto. She remained in that service from the latter part of February, 1865, till sometime in March or April, 1866, in all 402 days; but no compensation for her use was paid by the Government.

VIII. At the end of that time, under an order from the Quartermaster General's Office, directing that vessels captured at Charleston should, when not required by the Quartermaster's Department, be
10 turned over to the agents of the Treasury, the De Kalb was so turned over, and on the 6th of June, 1866, was sold by T. C. Callicot, supervising special agent of the Treasury Department, and the net proceeds of the sale were $3,963 38, which were paid into the Treasury of the United States.

IX. Between the months of February and October, 1865, the United States expended in the repairs of said boat $15,334 30.

X. The claimant consistently adhered to the United States during the rebellion, and gave no aid or comfort to persons engaged in said rebellion, unless the contrary should be considered as growing out of the fact that he became the purchaser of said boat while she was under charter to the rebel authorities, and thereafter continued till the capture of Charleston to manage her as her owner.

Upon the foregoing facts the conclusion of law is, that the proviso to the first section of the act of March 12, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States;" and the first section of the "Act to restrict the jurisdiction of the Court of Claims," &c., approved July 4, 1864, preclude this court from taking jurisdiction of this action, and that the claimant's petition should be dismissed.

(Indorsed:) Hamilton Slawson, j'r, vs. The United States.

11 In the Court of Claims.

HAMILTON SLAWSON, J'R, *vs.* THE UNITED STATES. } No. 3120.

I, John Randolph, assistant clerk of the Court of Claims, do hereby

certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal, as filed in the clerk's office May 18, 1871, and of the order of the court allowing the same; of the finding of facts and conclusion of law thereon, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this sixteenth day of October, A. D. 1871.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 371. Hamilton Slawson, j'r, appellant, vs. The United States. Court of Claims. Filed 3d November, 1871.

Supreme Court of the United States.

DECEMBER TERM, 1872.

No. 141.

HAMILTON SLAWSON, JR., Appellant,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

History of the Case.

This action was commenced in the Court of Claims, under the third section of the act of March 12th, 1863, providing for the collection of abandoned property (12 Stat., p. 820,) for the recovery of the net proceeds realized from the sale of the steamer DeKalb, which was taken under contract by the quartermaster at Charleston, South Carolina, and put into the service of the United States, and was afterwards turned over to the agent of the Treasury Department, by whom said vessel was sold and the net proceeds of said sale duly paid into the Treasury of the United States.

The facts found by the court below will be found on pp. 4 and 5 of the record. By these "findings" it will be seen that the said steamer was not captured by the Federal forces at Charleston, but that she was brought up from an island in the bay, opposite Charleston, by the appellant, and voluntarily placed in the service of the Government, and that the

agents and officers of the United States agreed and promised to pay $150 per day for her services. This agreement, however, was not kept and no payment was made for her use. The said vessel was retained in the service of the Government four hundred and two days, and then, in obedience to instructions, she was turned over to the agent of the Treasury Department and sold.

No one intervened as captor, and no proceedings were instituted to condemn said steamer. The Government now claims that the said steamer was seized by the United States because she had been employed in the service of the Confederate States, in making war upon the United States, and under the provisions of the 6th section of the act of July 17, 1862; and that the steamer should not be treated as captured property under the act of 12th March, 1863; and as the said steamer had been used in making war upon the United States, and had been seized and appropriated by the army, that the Court of Claims had no jurisdiction in the case.

At or about the time the steamer was put into the service of the United States, to wit, on the 2d day of March, 1865, appellant took the oath of amnesty under the proclamation of President Lincoln, of the 8th day of December, 1863, which fact appellant offered to prove on the trial of the case, but the court refused to receive such proof. See the stipulation of counsel, printed herewith.

Assignment of errors.

The Court of Claims erred—

1st. In treating the said steamer as captured property, under the acts of July 13, 1861, and July 17, 1862.

2d. In holding that the 3d section of the act of July 2d, 1864, did not so amend and extend the first section of the act of March 12, 1863, as to embrace steamboats and all other property mentioned in the acts of July 13, 1861, and July 17, 1862.

3d. In holding that the proviso to the first section of the act of March 12, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts within the United States," and the first section of the "Act to restrict the jurisdiction of the Court of Claims," &c., approved July 4th, 1864, preclude the Court from taking jurisdiction of this case, and that the claimant's petition should be dismissed.

4th. In refusing to receive the evidence that appellant had taken the oath of amnesty.

5. In the application of the law to the facts as found in said court in this case.

Argument.

I.

In the act of July 13, 1861, section 6th, it is provided that certain steamboats shall be forfeited, and section 9 directs how the forfeiture shall be effected; and section 6 of the act of July 17, 1862, provides for the seizure and appropriation of all kinds of property owned by those in rebellion against the United States, and section 7 of said last-mentioned act provides for the condemnation of said property. Under each statute, proceedings had to be instituted in the proper courts, and condemnation had by due process of law. To avoid this expense and delay in certain cases, Congress passed the act of March 12, 1863, which authorized the Secretary of the Treasury to appoint agents for the collection of abandoned and captured property in the insurrectionary district; but said act provided that such captured and abandoned property should not include any kind or description which had been used, or which was intended to be used, for carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other water-craft, and the furniture, forage, military supplies, or munitions of war.

It will be seen that this proviso embraces only such property as had been used, or was intended to be used, in carry-

ing on war; that is, *the public property of the enemy*, which, according to the laws of war, belong to the conquering sovereign or State. 3 Philemon, 189; Alexander *vs.* The Duke of Wellington, 2 Russ. & Myena, 35; French Guiana, 2 Dod., 150; the Gecroa, *id.*, 444; (see 4 Cranch, 452.) Private property on land could not be seized and condemned without statutory provisions, and ships and other vessels seized at sea or in port could be condemned only by libel in the prize courts. We must, therefore, construe the proviso in the first section of the act of March 12, 1863, to embrace public property only, which belonged to the enemy and which was owned and used by the Confederate States, or which was owned and intended to be used by them in the operations of war; and we submit that the proviso was not intended to embrace or include private property, such as the DeKalb, which had been seized by the Confederates and used in carrying supplies and commissary stores within the harbor of Charleston, and which had been thus used contrary to the wishes and in violation of the rights of the appellant. Such a construction would not only ratify the original wrong of the Confederates, but it would justify the act of seizure on their part, and make the United States a receiver of property plundered from its own citizens.

By limiting the proviso to public property Congress appears to have had in view the 58th article of war, which requires that all public property taken from the enemy shall be secured for the use of the United States.

If our construction of the law is correct, then the Court of Claims erred in treating this private property as public property belonging to the Confederate States and liable to capture *jure belli*, and to be appropriated by the State as booty.

II.

The operation of the first section of the act of March 12, 1863, was extended and enlarged by the third section of the

act of July 2, 1864, so as to include all descriptions of property mentioned in the acts of July 13, 1861, and July 17, 1862. These acts embraced all estates and private property of every description. And the third section of the act of July 2, 1864, amended section 6 of the act of March 12, 1863, so as to compel the army and navy to turn all such property over to the agents of the Treasury Department, thus bringing the proceeds of said property under the operation of the third section of act of March 12, 1863.

In the eighth finding of the Court of Claims, it will be seen that the steamer De Kalb was turned over to the agent of the Treasury Department by the quartermaster, according to the law of July 2, 1864, and that the Treasury agent, as directed in the act of March 12, 1863, sold said steamer, and paid the net proceeds into the Treasury of the United States, thus treating such steamer as captured property under that law, and not as public property captured *jure belli* from the enemy, and belonging to the United States by right of such capture.

The steamer was turned over in obedience to instructions, and according to the construction given to these various acts by the Secretary of the Treasury. After the act of July 2, 1864, new regulations respecting captured, abandoned, and confiscable personal property were issued, (see page 111 of Treasury Regulations,) and the quartermaster, in pursuance of section 6 of the act of 12th March, 1863, as amended by section 3 of the act of July 2, 1864, turned the steamer over to the Treasury agent, and the Government treated said steamer as captured private property under said act.

In the case of Mrs. Alexander, (2 Wall., 422, 423,) this honorable court held that all such property was held by the Government under the act of March 12, 1863, as amended by the act of July 2, 1864. These laws "illustrate the general policy of legislation to mitigate, as far as practicable, the harshness of the rules of war, and preserve for loyal owners obliged by circumstances to remain in rebel States,

all property, or its proceeds, to which they have just claims, and which may in any way come into the possession of the Government or its officers."

III.

The Court of Claims erred in holding that this property was excluded by the *proviso* in said acts, and that this claim is precluded by the act of July 4, 1864, restricting the jurisdiction of the Court of Claims. We submit that we have shown that the said proviso was not intended to exclude private property, and that if this does not appear sufficiently clear in the law itself, that it is made so by section 3, of the act of July 2, 1864, by which the first section of the act of March 12, 1863, is extended to all kinds of property, and it is clear that the extension embraces private property only and not all kinds of public property, which the Government did not propose to hold in trust for the Confederate States.

It is equally clear that the Court of Claims erred in holding that this claim was excluded by the act of July 4th, 1864. This act was intended to restrict the jurisdiction of the Court of Claims in cases where the property had been damaged or destroyed, or where it had been appropriated to the use of the army or navy, and where no other disposition had been made of the property, that is, where it had been consumed as quartermaster's stores, or where it had been appropriated as booty to the public use, and not, as in this case, where the property had been turned over to the Treasury agent under the act of March 12, 1863, as amended by the act of July 2, 1864. Although the DeKalb had been used by the Quartermasters Department, as shown in the findings of fact, she was not *appropriated*, in the language of the law, for we find that she was eventually turned over to the Treasury agent, and by him sold, and the proceeds paid into the Treasury. It seems difficult to make a distinction between this steamer and other property taken and finally disposed of by the Treasury agent. The only distinction we

can see is, that in most of the cases the Government seized the property against the wishes of the owner, while in this case possession was secured with the consent of the owner and under a solemn contract to pay for her services, and in turning the steamer over to be sold by the Treasury agent, the officers violated the national faith.

IV & V.

The Court of Claims erred in the application of the law to the facts as found by the court. It will be seen in the tenth finding that it was found that appellant consistently adhered to the Uuited States during the rebellion, unless the contrary should appear from the fact that he had purchased the De-Kalb while she was in the service of the rebel authorities; and it will be found that two of the judges concurred in the opinion of the court only upon the ground that this was a consent that the said steamer might be used in waging war upon the United States, and that appellant was disabled from bringing a suit in said court by having aided and abetted in the rebellion.

The stipulation shows that the appellant offered to prove that he had taken the oath of amnesty about the time the contract for the use of the steamer was made, but this honorable court, in the case of Klein *vs.* The United States, held that such actions might be maintained in said court without the oath of amnesty. Two of the judges of said court (four only having heard the case) concurred in the following decision:

Loring, J., concurring:

Judge Milligan and myself are of opinion that the proviso of the first section mentions the kind of property it specifies as examples merely, and not as an enumeration of the articles excluded, and that the purpose and effect of the proviso are to exclude all property used or intended to be used with the assent of its owner for carrying on war against the United States. No subsequent statute refers in any way to property used or intended to be used for carrying on war

against the United States; and on this construction of the law only we find for the defendant in this case; for the plaintiff bought this steamer while she was under charter in the rebel service, and with the knowledge that he could not recover her from that service. This, as his purchase, was optional to his assent that his property might be used in waging war against the United States. We think, therefore, that by the proviso this case is removed from our jurisdiction, and that by force of the act of 3d March, 1863, the plaintiff is disabled from bringing any suit in this Court by having aided, abetted, and given encouragement to rebellion.

For these manifold errors we submit that the decree of the Court of Claims should be reversed.

Respectfully submitted.

GEORGE TAYLOR,
Attorney for Appellant.

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In the Supreme Court of the United States.

DECEMBER TERM, 1872.

HAMILTON SLAWSON
vs.
THE UNITED STATES. } No. 141.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

HAMILTON SLAWSON
vs.
THE UNITED STATES. } No. 141.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

ARGUMENT.

I.

The Court of Claims has no jurisdiction of this case, because it comes within section 1 of the act of July 4, 1864, (13 Stats. at Large, 381,) which declares "That the jurisdiction of the Court of Claims shall not extend to or include any claim against the United States growing out of the destruction or appropriation of or damage to property by the army or navy, or any part of the army or navy, engaged in the suppression of the rebellion, from the commencement to the close thereof."

Assuming that the De Kalb belonged to the claimant, and had not been used with his consent by the Confederate government, it appears by the seventh finding of the Court of Claims (Record, p. 5) that the vessel was taken possession of by Tower, an engi-

neer in the United States Navy, who was placed in charge of captured vessels after the evacuation of Charleston, and by Tower she was turned over to the United States officers, and employed by the Quartermaster's department of the army, without the assent of the claimant. This was clearly an appropriation of the property under the decisions of this court.

United States *vs.* Kimball, 13 Wallace, 636.

Pugh *vs.* United States, *ibid.*, 633.

II.

If the act of July 4, 1864, does not apply to this case, the decision of the court below was correct, because the steamer had been used in carrying on war against the United States. The first section of the act of March 3, 1863, (12 Stats. at Large, 820,) providing for the collection of abandoned property and for the prevention of fraud in the insurrectionary districts within the United States, expressly provides that the property included within the act "shall not include any kind or description which has been used or which was intended to be used for waging or carrying on war against the United States, such as arms, ordnance, ships, steamboats, or other water craft, and the furniture, forage, military supplies, or munitions of war."

The steamboat in this case comes directly within the language of the proviso, and there is no reason for so limiting the application of the act as to hold, as the claimant contends, that it only applies to the property of the Confederate government, and not to property

belonging to private individuals which was used by it in its military operations.

In the first place, the proviso makes no reference to the rebel government or to the ownership of property, but refers only to property that has been "used," or was intended to be "used," in carrying on war against the United States. Therefore, it is the *use* made of the property, and not the *ownership* of it, to which the statute refers.

In the second place, the whole statute refers solely to private property, and not to public or *quasi* public property of the rebel Government. That would become the property of the United States on capture, or upon the suppression of the rebellion, by the laws of war, without any legislation whatever; and no legislation in respect thereof was necessary.

In the third place, such a construction would open the way for fraudulent claims so extensive as to leave very little, if any, property to which the proviso could apply.

III.

If the court shall be of opinion that the proviso of the act of 1863 applies only to property held and used with the consent of the owner by the Confederate government, then it would include this case, because it is found that the claimant bought the steamer DeKalb while she was in possession and used by the rebel government under a charter. When he bought her, she seems to have been already liable to forfeiture, and, even if she were not, his purchase under such circum-

stances was an assent to the use to which she was then put, and he cannot complain if, buying her under such circumstances, she is treated as property of the rebel government. *Volenti non fit injuria.*

C. H. HILL,
Assistant Attorney General.